

E-Filed 10/16/12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RUFUS CASANOVA LOVE III,

No. C 12-3265 RS (PR)

Petitioner,

ORDER TO SHOW CAUSE

v.

RANDY GROUNDS,

Respondent.

INTRODUCTION

This is a federal habeas corpus action filed pursuant to 28 U.S.C. § 2254 by a *pro se* state prisoner. The amended petition is now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases. The filing fee has been paid.

The petition appears to be untimely under § 2254. Petitioner was convicted in 1997, yet the instant petition was not filed until 2012. Respondent may wish to file a motion to dismiss on grounds that the petition is untimely, but he is not required to do so.

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BACKGROUND

According to the petition, in 1997, petitioner was convicted in state court of kidnapping and robbery. Consequent to the verdicts, petitioner was sentenced to 50 years-to-life in state prison.

DISCUSSION

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A district court considering an application for a writ of habeas corpus shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

As grounds for federal habeas relief, petitioner alleges that (1) there was insufficient evidence to support his convictions; (2) he was convicted on a less than a beyond a reasonable doubt standard; (3) defense counsel rendered ineffective assistance; and (4) the police engaged in misconduct. Liberally construed, these claims are cognizable on federal habeas review.

The petition appears to be untimely under § 2254. Petitioner was convicted in 1997, yet the instant petition was not filed until 2012. Respondent may wish to file a motion to dismiss on grounds that the petition is untimely, but he is not required to do so.

CONCLUSION

1. The Clerk shall serve by certified mail a copy of this order, the petition and all attachments thereto, on respondent and respondent’s counsel, the Attorney General for the State of California. The Clerk shall also serve a copy of this order on petitioner.

1 2. Respondent shall file with the Court and serve on petitioner, within **ninety (90)**
2 days of the date this order is filed, an answer conforming in all respects to Rule 5 of the
3 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not
4 be granted based on petitioner's cognizable claims. Respondent shall file with the answer
5 and serve on petitioner a copy of all portions of the state trial record that previously have
6 been transcribed and that are relevant to a determination of the issues presented by the
7 petition.

8 3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse
9 with the Court and serving it on respondent's counsel within **thirty (30)** days of the date the
10 answer is filed.

11 4. In lieu of an answer, respondent may file, within **ninety (90)** days of the date this
12 order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory
13 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files
14 such a motion, petitioner shall file with the Court and serve on respondent an opposition or
15 statement of non-opposition within **thirty (30)** days of the date the motion is filed, and
16 respondent shall file with the Court and serve on petitioner a reply within **fifteen (15)** days of
17 the date any opposition is filed.

18 5. Petitioner is reminded that all communications with the Court must be served on
19 respondent by mailing a true copy of the document to respondent's counsel.

20 6. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
21 Court and respondent informed of any change of address and must comply with the Court's
22 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
23 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

24 7. Upon a showing of good cause, requests for a reasonable extension of time will be
25 granted provided they are filed on or before the deadline they seek to extend.

1 8. Petitioner's motion for the appointment of counsel (Docket No. 10) is DENIED.
2 There is no right to counsel in habeas corpus actions. *See Knaubert v. Goldsmith*, 791
3 F.2d 722, 728 (9th Cir. 1986). However, 18 U.S.C. § 3006A(a)(2)(B) authorizes a district
4 court to appoint counsel to represent a habeas petitioner whenever "the court determines that
5 the interests of justice so require" and such person is financially unable to obtain
6 representation. The decision to appoint counsel is within the discretion of the district court,
7 *see Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), and should be granted only when
8 exceptional circumstances are present. *See generally* 1 J. Liebman & R. Hertz, Federal
9 Habeas Corpus Practice and Procedure § 12.3b at 383–86 (2d ed. 1994). Petitioner has not
10 shown that there are exceptional circumstances warranting appointment of counsel. The
11 Clerk shall terminate Docket No. 10.

12 **IT IS SO ORDERED.**

13 DATED: October 16, 2012


RICHARD SEEBORG
United States District Judge